(5)

No. 94-1705

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1994

---

ASTON A. BEADLE,

*Petitioner,*

v.

CITY OF TAMPA, FLORIDA, a Florida municipal corporation, and THE CITY OF TAMPA, FLORIDA, POLICE DEPARTMENT,

*Respondents.*

---

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

---

## MOTION OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AND THE NATIONAL ASSOCIATION OF EVANGELICALS FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF AND BRIEF OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AND THE NATIONAL ASSOCIATION OF EVANGELICALS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

---


*Of Counsel:*
FOREST MONTGOMERY
General Counsel
National Association of Evangelicals
1430 K Street, N.W.
Washington, D.C. 20005

WALTER E. CARSON
*Counsel of Record*
MITCHELL A. TYNER
Office of General Counsel
General Conference of Seventh-day Adventists
12501 Old Columbia Pike
Silver Spring, MD 20904
(301) 680-6319

*Counsel For Amici Curiae*



PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. 1-800-347-8208


ZOPP

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

---

NO. 94-1705

---

ASTON A. BEADLE,

Petitioner,

v.

CITY OF TAMPA, FLORIDA, et al,

Respondents.

---

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

---

# Motion Of The General Conference of Seventh-day Adventists and The National Association of Evangelicals For Leave To File An *Amicus Curiae* Brief In Support Of Aston A. Beadle's Petition For A Writ Of Certiorari

---

The Seventh-day Adventist Church and the National Association of Evangelicals respectfully move this Court for

leave to file the accompanying *Amicus Curiae* Brief. Counsel of Record for the Petitioner has consented to filing of this Brief; however, Counsel for Respondent declined to do so.

## INTEREST OF *AMICI CURIAE*

The General Conference of Seventh-day Adventists, established in 1863, is a recognized religious organization with a worldwide membership of 8 million. Within the fifty states and the District of Columbia are more than 3,000 local Seventh-day Adventist congregations with approximately 775,000 members.

Seventh-day Adventists follow the Bible command that the Sabbath the seventh day, be set aside from secular work and worldly endeavors. Sabbath observance is by no means arbitrary, mechanical or ritualistic. Rather it represents a weekly memorial to the creative power of God and an invitation to the believer for a personal fellowship with God (Exodus 20:8-11). The observance of the Sabbath is a symbol also of man's creation in the image of God with the dignity of free choice and freedom from servitude (Deuteronomy 5:12-15).

Because of their Sabbatarian beliefs and practices, Seventh-day Adventists often encounter difficulties in the work place. In one four year period, the Department of Public Affairs and Religious Liberty of the General Conference of Seventh-day Adventists recorded more than 800 employment problems involving Sabbath observance in the United States. Following this Court's decision in Trans World Airlines, Inc. V. Hardison, 432 U.S. 63 (1977), which construed the religious accommodation provision of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e(j), the number of

problems has ballooned.

***

The National Association of Evangelicals (NAE) is a non-profit association of evangelical Christian denominations, churches, organizations, institutions and individuals that includes more than 50,000 churches from 74 denominations and serves a constitutency of approximately 20 million people. NAE is committed to defending religious freedom as a precious gift of God and a vital component of the American heritage.

***

Because of long standing interest in protecting the religious freedom of those who for sincere religious reasons cannot work on a Sabbath or holy day, *Amici* request the Court grant this motion for leave to file an *Amicus Curiae* Brief supporting Aston A. Beadle's Petition for a Writ of Certiorari.

Respectfully submitted,

S/WALTER E. CARSON

WALTER E. CARSON
*Counsel of Record*
MITCHELL A. TYNER
Office of General Counsel
General Conference of
Seventh-day Adventists
12501 Old Columbia Pike
Silver Spring, MD 20904
(301) 680-6319

*Counsel for Amici Curiae*

*Of Counsel:*
FOREST MONTOMGERY
General Counsel
National Association of
Evangelicals
1430 K Street, N.W.
Washington, D.C. 20005

DATED: 19 May 1995

## TABLE OF CONTENTS

Page

MOTION OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AND THE NATIONAL ASSOCIATION OF EVANGELICALS FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF.....i

BRIEF OF GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AND THE NATIONAL ASSOCIATION OF EVANGELICALS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER.....1

TABLE OF CONTENTS.....iv

TABLE OF AUTHORITIES.....v

INTEREST OF *AMICI CURIAE*.....ii,2

SUMMARY OF ARGUMENT.....3

ARGUMENT.....4

CONCLUSION.....10

PETITIONER'S CONSENT.....App. A

CERTIFICATE OF SERVICE.....App. B

## TABLE OF AUTHORITIES

Cases — Page

*Committee For Public Education v. Nyquist*
413 U.S. 756 (1973).....4

*Dewey v. Reynolds Metals Co.*
429 F.2d 324 (6th Cir. 1978).....5

*Griggs v. Duke Power Co.*
401 U.S. 424 (1971).....4

*Thornton v. Caldor*
472 U.S. 703 (1985).....4

*Trans World Airlines v. Hardison*
432 U.S. 63 (1977).....*passim*

Statutes

42 U.S.C. §§ 2000e et seq. (Title VII of the Civil Rights Act of 1964, As Amended).....ii,3

42 U.S.C. § 2000e(j), Section 701(j).....*passim*

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

---

NO. 94-1705

---

ASTON A. BEADLE,

Petitioner,

v.

CITY OF TAMPA, FLORIDA, et al,

Respondents.

---

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

---

# *Amicus Curiae* Brief of the General Conference of Seventh-day Adventists and the National Association of Evangelicals in Support of Petitioner

---

*To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States*:

For the reasons herein stated, the General Conference of Seventh-day Adventists and the National Association of Evangelicals, *as amici curiae*, request the Court to grant Aston

A. Beadle's Petition for a Writ of Certiorari.

## INTEREST OF THE *AMICI CURIAE*

A statement of *Amici Curiae's* interest appears in the attached Motion for Leave to File this Brief.

Evolving case law which addresses religious accommodation, will affect future employment opportunities for all Sabbatarians, and other persons who give special significance to a particular period of time for religious purposes. *Amici Curiae* express concern for such disadvantagaed persons as well.

*Amici* secured Petitioner's written consent to the filing of this Brief. (See Appendix A ) The letter of consent has been filed with the Office of the Clerk of this Court. Respondent declined to give its consent.

## SUMMARY OF ARGUMENT

Eighteen years ago this Court's decision in Trans World Airlines v. Hardison, 432 U.S. 63 (1977) dealt a "fatal blow" (*id.* at 86) to Congressional efforts to accommodate an employee's religious practices. Ironically, this blow was delivered, not by the Court itself, but by employers and subsequent court decisions which distorted Hardison's counsel. While the work place remains open irrespective of one's race, sex, national origin, disability or age, no such protection now exists for religious practices, despite the high place our society and the U.S. Constitution afford the free exercise of religion.

Because Beadle typifies the distortion of Hardison, it

provides the Supreme Court a unique opportunity too further clarify and resuscitate the religious accommodation provisions of Title VII of the Civil Rights Act of 1964. Failure to correct this distortion leaves workers without a remedy when faced with the cruel choice between religious practice and employment. To correct such an unintended consequence of Hardison the Petition for a Writ of Certiorari should be granted.

## ARGUMENT

The Supreme Court's decision in Trans World Airlines v. Hardison, 432 U.S. 63 (1977), has proven to be a watershed for religious accommodation in the work place. Employers and many Courts today use Hardison to effectively minimize Title VII's protection against religious discrimination.

The consequences of Hardison are best seen by an overview of Title VII's religious accommodation requirement. First, Section 703(a)(1) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1), makes it an unlawful employment practice for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion . . . " Second, Section 701(j) of the Act, added by the Equal Employment Opportunity Act of 1972, 42 U.S.C. 2000e(j), defines "religion" to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the

conduct of the employer's business."

The reasonable accommodation provision serves that "valid secular legislative purpose" Committee for Public Education v. Nyquist, 413 U.S. 756 at 773 (1973) and Thornton v. Caldor, 472 U.S. 703 at 712 (1985) (O'Connor, J., concurring), as that served by Title VII generally - seeking "to achieve equality of employment opportunities" by "remov[ing] . . . artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification" Griggs v. Duke Power Co., 401 U.S. 424 at 429, 430 (1971). Congress properly determined that an individual's employment opportunities should depend solely on job qualifications and that one's religion -- as well as one's race, nationality, and sex -- should not affect such opportunities.

The reasonable accommodation provision (Section 701(j) of the Act) represented a permissible legislative effort - plainly secular in purpose - to identify the circumstances where an individual's religious practices are sufficiently relevant to his job qualifications that they properly be taken into account in connection with an employment decision. No exceptions - "public policy" or otherwise - were written into the law.

Section 701(j) was added in 1972 by a Senate floor amendment to the Equal Employment Opportunity Act. Senator Jennings Randolph, who proposed the amendment, described its intent as furthering Title VII's guarantee of "freedom from religious discrimination in the employment of workers" and "to resolve by legislation - and in a way I think was originally intended by the [1964] Civil Rights Act - an issue which the Courts apparently have not resolved" (118

Cong. Rec. 705, 706). That issue was the extent to which Title VII's ban on religious discrimination limited an employer's freedom to discharge or refuse to hire an individual whose religious practices conflicted with the employer's work schedules. See Dewey v. Reynolds Metals Co., 429 F.2d 324 (6th Cir. 1978).

While Senator Randolph's remarks included an expression of special concern about the dwindling membership of certain Sabbatarian sects (118 Con. Rec. 705), the overriding need for the amendment was to eliminate "religious discrimination in . . . employment (*id.*). He agreed with Senator Dominick that the provision would protect the equal employment opportunities not only of Sabbatarians, but also members of any "other religious sect which has a different method of conducting their lives than do most Americans" (*id.* at 706). The law's valid secular purpose was not to advance religion but rather, in "the spirit of religious freedom" (*id.*), to ensure that no individual's religious practices would needlessly restrict his work opportunities. This objective was fully in accord with the general purposes of Title VII as a whole.

The reasonable accommodation provision sought to restrain employers from enforcing uniform work rules that, although facially neutral, discriminate in effect against employees holding certain religious convictions. The amendment provided job security except when accommodation of an employee's religious practices would impose an undue hardship on the employer's business.

In Hardison this Court addressed the extent of an employer's Title VII obligation to accommodate an employee's religious beliefs which prohibited him working on Saturday. The Court's analysis was informed by several factors: the

maintenance and overhaul base was an essential part of the defendant's operation; the department was open 24 hours a day, 365 days per year; an absent employee had to be replaced by a worker from another department; the employees at the facility were subject to a collective bargaining agreement which gave most senior employees first choice for job and shift assignments; Hardison's job was essential and on weekends he was the only person available; a vacancy in the department would have impaired its function which was critical to the airlines operations; to have filled his job from another area would have undermanned another operation; and to employ a replacement worker would have required the employer to pay premium wages.

The Court found the intent of Section 701(j) was to make unlawful an employer's failure to make a reasonable accommodation of its employees' religious practices, short of undue hardship. Yet Congress provided no guidance for determining what was a reasonable accommodation; or what constituted "undue hardship." In Hardison, the Supreme Court provided guidance as to the meaning of these terms.

In finding for the employer, the Court adopted the finding of the District Court "that TWA had done all that it could do to accommodate Hardison's religious beliefs without either incurring substantial costs or violating the seniority rights of other employees." 432 U.S. at 83, n.14. The Court was unwilling to carve out a special exception to the seniority rights of the collective bargaining agreement which the employee had argued was an available reasonable accommodation. Thus the proposed accommodation requiring an exception to the collective bargaining agreement was determined to be unreasonable.

Further, the costs of hiring qualified personnel to replace Hardison each week - which required the payment of premium wages and resulted in lost efficiency in other jobs - were determined to be an undue hardship on the employer. "To require TWA to bear more than a de minimis cost in order to give Hardison Saturdays off is an undue hardship." 432 U.S. 84. While finding for the employer, the Court in Hardison recognized the paramount concern of Congress in enacting Title VII was the elimination of discrimination in employment.

The Eleventh Circuit decision rests on Hardison. Yet the facts in this appeal are quite different: Beadle was in a training program, there was no "24 hours a day, 365 days a year" requirement; there was no concern about replacement employees being transferred from one department to another with a lowering of productivity; there was no collective bargaining agreement with a seniority provision limiting accommodation alternatives; there was no showing that his position as a trainee was essential to the operation of the Tampa City Police Department; there was no showing of an impairment in the department's operation; nor was there a showing that the city would have to pay premium wages, or incur any additional financial cost, to accommodate Beadle. Mere inconvenience and a wooden adherence to policy provided the employer's only justification. Finally, neither Title VII nor Hardison created a "public safety" exception to the religious accommodation provisions.

Unlike Hardison Tampa City had not exhausted all available means of accommodation. Beadle was "randomly" assigned a work schedule which resulted in a conflict with his religiously required Sabbath observance, despite the existence of a work schedule which would have accommodated his religious practices. The City admitted such an assignment

would *not* have been detrimental to his training. Tampa City did not allow recruits to use vacation or leave time during this training period; yet there was no showing why a limited exception to this rule could not be created for Beadle's benefit. Beadle's training could have been extended a short period of time at no cost to the City to give him any additional required experience. Such an extension had been used by other recruits who appeared to need further training.

The religious accommodation provision of Title VII has become a dead letter. The federal courts, as illustrated in the Eleventh Circuit's opinion, have used Hardison to effectively exclude from the workplace persons who need a religious accommodation. This has been accomplished in two ways. First, under the decisions the employer need not attempt an actual accommodation. Instead a mere allegation of the likely results often suffices. Second, an "undue hardship" no longer involves financial costs. Inconvenience to either the employer or other employees is enough to defeat claims of religious discrimination under Title VII.

Certainly the Court never intended such consequences. The reported cases involving interpretation of Section 701(j) number upwards of 200. Yet *Amici* believes these are but the tip of the iceberg. Harsh reality finds employers and courts alike continuing to discriminate against religious minorities. This flagrant disregard of remedial legislation passed to accommodate our First Liberty is carried out in the name of Hardison. Ironically the physically disabled in this country are treated more favorably when the "undue hardship" test is applied to their circumstances.

*Amici* asks the Court to use Beadle as a vehicle to revisit Hardison. Viability of the religious accommodation

accommodations," "undue hardship," and "diminimis cost" are to be interpreted. Hardison-based misunderstandings must be clarified and important questions answered: Does a claim of inability to accommodate satisfy the requirements of the law; or must the employer show an actual attempt at accommodation; is there a "public safety" exemption in the law; and does undue hardship entail di minimis costs of a financial nature; or does it simply mean mere inconvenience or some other unpleasantness? Clarification on these issues is critical if congressional intent in passing Section 701(j) is to become a reality.

## CONCLUSION

The Petition for A Writ of Certiorari should be granted allowing the Court an opportunity to address the misapplication of its decision in Trans World Airlines v. Hardison; and thus afford those seeking a work place religious accommodation the protection intended by Congress.

Respectfully submitted,

S/WALTER E. CARSON

WALTER E. CARSON
*Counsel of Record*
MITCHELL A. TYNER
Office of General of Counsel
General Conference of
Seventh-day Adventists
12501 Old Columbia Pike
Silver Spring, MD 20904
(301) 680-6319

*Counsel for Amici Curiae*

*Of Counsel:*
FOREST MONTGOMERY
General Counsel
National Association of
Evangelicals
1430 K Street, N.W.
Washington, D.C. 20005

DATED: 19 May 1995